



# Commonwealth of Massachusetts State Ethics Commission

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## PUBLIC ENFORCEMENT LETTER

Dear Mr. Alves:

As you know, the State Ethics Commission ("the Commission") has conducted a preliminary inquiry into allegations that you violated the state conflict of interest law, General Laws c. 268A, by purchasing a boat you previously recovered in your capacity as a police officer. Based on the staff's inquiry (discussed below), the Commission voted on January 19, 2000, that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §23(b)(3).

For the reasons discussed below, the Commission does not believe that further proceedings are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with the conflict of interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

### **I. Facts**

1. You are a Freetown police lieutenant and police prosecutor.
2. In 1995, Dennis Oliveira ("Oliveira") decided to sell his 24 foot Bayliner boat to a buyer ("Buyer")<sup>1/</sup> for \$6,000. Buyer paid Oliveira \$3,000 and agreed to pay the balance within 30 days. Oliveira allowed Buyer to take the boat; Oliveira kept the title.<sup>2/</sup>
3. Oliveira tried a number of times to collect the outstanding \$3,000 but Buyer never paid Oliveira. Subsequently, Buyer took the boat from the marina and disappeared. Oliveira went to the district court to file a complaint about the boat. The court clerk directed Oliveira to talk with you. [You were the police prosecutor so the clerk knew that you could handle the complaint.] Oliveira explained that the boat was worth about \$12,000 but that he had sold it to a Buyer for \$6,000. You told Oliveira to come to the police station and file a report with the police that the boat was stolen. Oliveira came to the police station on January 18, 1996, and filed a report.
4. When Oliveira described the boat, you remembered having seen it at the Fall River Marina. The boat was no longer there, but you were able to use the marina's records to track it

to New Bedford. On April 22, 1996, you found the boat in New Bedford and notified the Freetown police. You tried to contact Oliveira to tell him that the boat had been recovered but Oliveria was out of town.

5. You went to file an application for an arrest warrant for Buyer with the court for larceny by false pretenses. You discovered, however, that there already were unrelated outstanding warrants against Buyer so you decided to pick Buyer up on the other warrants and question him before filing a warrant application on the boat. Simultaneously, however, Buyer was picked up for unrelated matters and was at the courthouse holding cell.

6. On May 8, 1996, you questioned Buyer at the courthouse holding cell about the boat. Buyer said it was all a misunderstanding. Buyer asked for a chance to speak with Oliveira to work the matter out. Buyer and Oliveria came to an agreement where Buyer returned the boat to Oliveria.

7. According to you, after Buyer gave the boat back, Oliveira indicated that he wanted to sell the boat. Oliveria asked if you knew of anyone interested in purchasing the boat. Oliveria said he received \$3000 from Buyer and would sell the boat as long as he got the other \$3,000. When you found out you could get the boat for just \$3,000, you became interested. After inspecting the boat, you contacted Oliveria and said you would buy the boat for \$3,000.

8. Oliveira denied that you used your police officer position or coerced him in any way to sell you the boat for \$3,000.

9. Your police report on the incident, dated June 13, 1996, states:

... On 4/22/96 I drove by that location and observed the boat in question on blocks just down the street. The MS numbers had been changed to a bogus set. At this time I contacted the next wrecker in line (Big Wheels) who had Baylink Boat Transport move the boat to their property in Freetown where it was stored.

I contacted Mr. Oliveira (the owner) and advised him of same. The following day Buyer was picked up in Fall River for OUI and was arraigned on his various other charges. At the courthouse I mirandised Mr. Buyer and questioned him regarding the boat. He explained to me it was a misunderstanding and if I would give him the opportunity to straighten out the matter with Mr. Oliveira before he was officially charged. A couple days later Mr. Oliveira informed me that he wished not to pursue charges against Buyer, if possible, *and that the boat has now been sold* [italics added]. No charges against Buyer regarding the boat are being sought at this time.<sup>3/</sup>

10. You admit you purchased the boat prior to submitting your report.

11. You did not disclose to your appointing authority that you purchased the boat prior to submitting your report.

## **II. Discussion**

As a police lieutenant, you are a municipal employee subject to the conflict of interest law, G.L. c. 268A.<sup>4/</sup> You are subject to c. 268A generally and, in particular, to §23(b)(3). Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a

manner which would cause a reasonable person, with knowledge of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy her favor in the performance of official duties, or that she is likely to act or fail to act as a result of kinship, rank, position or undue influence. This subsection's purpose is to deal with appearances of impropriety and, in particular, appearances that public officials have given people preferential treatment. This subsection goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. The appointing authority must maintain that written disclosure as a public record.

There is reasonable cause to believe that you violated §23(b)(3) by intermixing your public and private dealings concerning the boat. By acting officially in a matter involving the Oliveira/Buyer boat transaction/theft while negotiating a deal to purchase and/or just having bought the boat from Oliveira, you created an appearance of conflict. A reasonable person would conclude that by entering into a business transaction with a complainant concerning the very property which is the subject of an unresolved (open) criminal complaint you could be improperly or unduly influenced in the performance of your official duties or that you were likely to act or fail to act officially because of that undue influence.<sup>5/</sup> Here, your taking or failing to take official action on Oliveira's criminal complaint also had the potential to influence Buyer regarding any action Buyer might want to take against Oliveira.<sup>6/</sup> Alternatively, you could have taken steps which could adversely affect Oliveira.<sup>7/</sup>

You acted officially in this matter on one occasion shortly after you bought the boat. Thus, in your June 13, 1996 police report you stated that you have decided not to pursue the larceny charges where the boat has been recovered and the owner is satisfied. You also stated, "The boat has now been sold."

The filing of this report was your official notification to your superiors of your decision not to further pursue this matter criminally. That was an important step in the process. To take that step shortly after you had purchased the very property that was the subject of the larceny complaint in question cannot help but create a significant appearance problem. One has to be concerned that you may have had a bias created by your own self-interest in the purchase, e.g., that if you pursued the matter criminally, Buyer might defend by trying to prove he owned the boat; or that such action might prompt Buyer to be more aggressive in asserting civil claims he would have against Oliveira which, in turn, could affect the price for which Oliveira would be willing to sell the boat. Moreover, the appearance problem is exacerbated by your misleading-by-omission statement, the "boat has now been sold." By so acting, there is reasonable cause to believe that you would cause a reasonable person to conclude that you were improperly influenced in the performance of your official duties in violation of §23(b)(3).

The Commission wants to make it clear that an investigating and/or prosecuting police officer should not become involved in any significant private transaction or relationship with key parties in a case he is investigating and/or prosecuting without first making an appropriate written disclosure to his appointing authority.

### **III. Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with a public enforcement letter rather than imposing a fine because it believes the public interest would best be served by doing so.

Based upon its review of this matter, the Commission has determined that your receipt of this public enforcement letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

**DATE: February 10, 2000**

<sup>1/</sup>It is unnecessary to identify "Buyer" for the purposes of this educational letter.

<sup>2/</sup>Buyer claimed he spent an additional \$2,700 on the boat trying to make it sea worthy although Oliveira disputes Buyer's claim.

<sup>3/</sup>The police department has the discretion to pursue larceny charges even if the private party decides not to press charges.

<sup>4/</sup>A copy of G.L. c. 268A is attached for your information.

<sup>5/</sup>For example, you could have decided to press larceny charges against Buyer even though he and Oliveira had reached a private resolution. Moreover, where Buyer was already in jail and unable to make bail on other charges, he was particularly vulnerable to your authority as a police officer.

<sup>6/</sup>Buyer could have contended that he was the owner of the boat (although he had not completed paying for it), and, consequently, could not have stolen his own boat. Consequently, he might have sought to prevent Oliveira from selling the boat to you or he may have brought a claim against Oliveira to recover the \$3,000 he had paid for the boat and/or the purported \$2,700 costs in repairs. Such claims, in turn, likely would have affected your transaction with Oliveira.

<sup>7/</sup>For example, you could have concluded that Buyer was the rightful owner (albeit in arrears with regard to payment of the full purchase price) and that police intervention to assist Oliveira was not warranted.